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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,951	12/11/2003	Stephanie Skolik	SKOLIK-I	8697

7590 09/28/2005

Nicholas A. Pandiscio
Pandiscio & Pandiscio, P.C.
470 Totten Pond Road
Waltham, MA 02451-1914

EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/733,951

Applicant(s)

SKOLIK, STEPHANIE

Examiner

Michael G. Bogart

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 2, 4-11, 13-18 and 23 is/are allowed.
- 6) ☒ Claim(s) 19-22 is/are rejected.
- 7) ☒ Claim(s) 3 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 15 March 2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities:

At page 3, line 2, after “insert”, replace “16” with –22--.

Appropriate correction is required.

Claim Objections

Claims 3 and 12 are objected to because of the following informalities:

In claim 3, line 1, insert a space between “1” and “wherein”.

In claim 12, line 6, after “close”, replace “of” with –off--.

Appropriate correction is required.

Claim Rejections – 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 19-21 are rejected under 35 U.S.C. § 102(b) as being anticipated by Stand *et al.*

(US 5,152,435 A).

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Regarding claim 19, Stand *et al.* teach a device (10) for delivering a metered quantity of a liquid ophthalmic product to an eye comprising:

a body (10) having an interior opening (98, 104), means (88) for supporting a bottle (18) containing a liquid ophthalmic product so that the interior of said bottle (18) communicates with said interior opening (98, 104), a holding chamber (36) in said body (12, 14, 16) displaced from said interior opening (98, 104), and a discharge orifice (46) communicating with said holding chamber (36),

metering means (34, 60) in said body (12, 14, 16) for receiving a small amount of liquid ophthalmic product from said bottle (18) via said interior opening (98, 104) and transferring said small amount of liquid ophthalmic product to said holding chamber (36),

means (32) exterior of said body (12, 14, 16) for moving said metering means (34) between a first position in which it communicates with said interior opening (98, 104) and a second position in which it communicates with said holding chamber (36); and

pneumatic means (82) for expelling said small amount of liquid ophthalmic product from said cavity holding chamber (36) and discharging it via said discharge orifice (46) in the form of a spray (20)(see figures 2 and 3, below)(abstract).

Regarding claim 20, Stand *et al.* teach that said pneumatic means (82) comprises a passageway connecting with said holding chamber (36), and manually operable piston means (12) for forcing a stream of air through said passageway (134) to said discharge orifice (46), whereby liquid ophthalmic product in said holding chamber (36) is entrained in said air stream and expelled from said orifice as an atomized spray (20)(labeled element 22 in the specification).

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Regarding claim 21, Stand *et al.* teach a bottle (18) containing a liquid ophthalmic product, said bottle (18) having a mouth attached to said body (12, 14, 16) and communicating with said interior opening (98, 104).

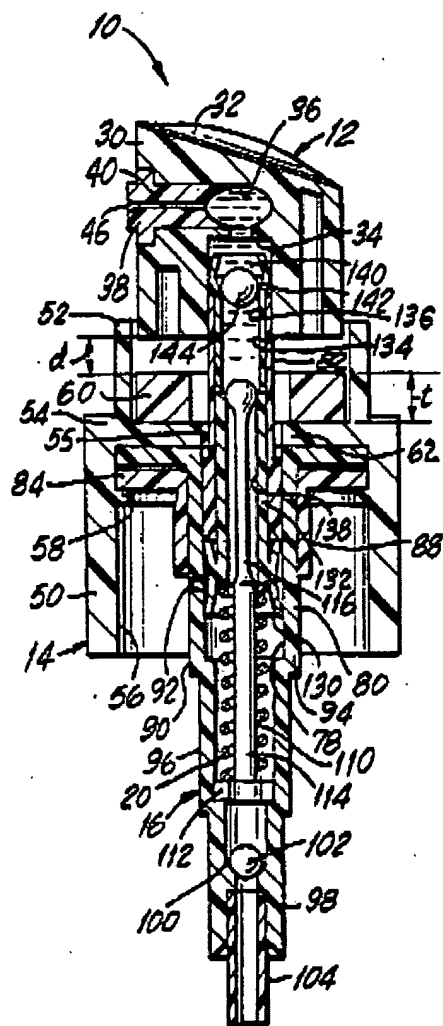


FIG. 2

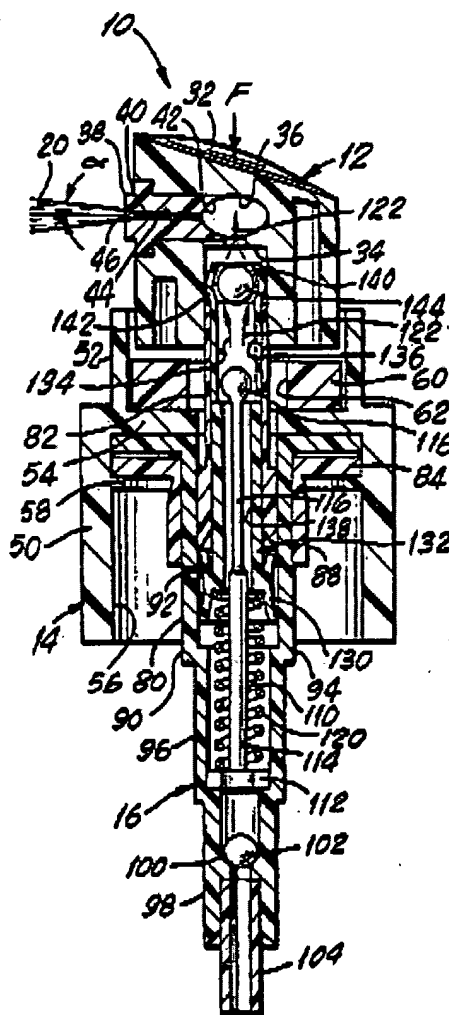


FIG. 3

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 22 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Stand *et al.* in view of McDermott *et al.* (US 4,667,854).

Stand *et al.* do not disclose expressly that the discharge orifice is sized so that surface tension of the ophthalmic product prevents it from leaking out of the discharge orifice.

McDermott *et al.* teach that making a liquid dispensing orifice sufficiently small can avoid leakage through the orifice due to the surface tension of the liquid (col. 3, lines 11-26).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to select an orifice sized to prevent leakage through the orifice due to the surface tension as taught by McDermott *et al.*, as the orifice for the fluid dispenser of Stand *et al.*

Allowable Subject Matter

Claims 1-18 and 23 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

The art of record fails to disclose or fairly suggest a liquid dispenser having a first cavity at an outer end capable of making a surrounding engagement with the mouth of a bottle, a transverse bore communicating with the first cavity, a discharge orifice on one side of the body, a holding chamber connecting the transverse bore and discharge orifice and a passageway communicating with the chamber, a rotatable metering member having a second cavity, the second cavity rotatable between a position where it is open to the first cavity and can collect a metered dose of liquid therefrom, and a position where the second cavity is aligned with the

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holding chamber allowing liquid to drain from the second cavity to the holding chamber, and a means for selectively injecting air into the holding chamber that expels liquid therefrom.

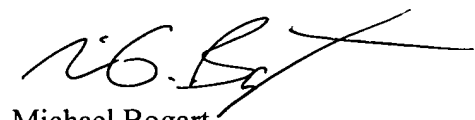
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
8 September 2005

**TATYANA ZALUKAEVA
PRIMARY EXAMINER**

